

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

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PLR-146412-11

Date:

December 17, 2012

Legend

Target =

Taxpayer =

State A =

Year 1 =

Business A =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

a =

b =

c =

d =

e =

f =

g =

h =

i =

Dear :

This letter responds to your request for rulings, dated November 3, 2011, regarding certain federal income tax consequences resulting from an ownership change as defined in section 382(g) of the Internal Revenue Code (the “Code”). The information provided in that request and in subsequent correspondence is summarized below.

The rulings contained in this letter are based upon facts and representations submitted by the taxpayer and accompanied by a “penalty of perjury” statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

Facts

Target is a State A corporation that was formed in Year 1 and that is engaged in Business A. On Date 1, Date 2, and Date 3, Target raised additional capital in the amounts of \$a, \$b, and \$c, respectively (for a total of \$d) through the issuance of preferred stock. Each of these three capital contributions (the “Capital Contributions”) was made within the 2-year period ending on the Change Date (as defined below).

Taxpayer is a publicly traded State A corporation that is engaged (directly or indirectly) in Business A. On Date 4 (the “Change Date”), a wholly owned subsidiary of Taxpayer merged with and into Target (with Target surviving), and Target’s shareholders exchanged all of their common and preferred shares of Target stock for common and preferred shares of Taxpayer stock, respectively (the “Transaction”). Since the Change Date, Target has been a member of the consolidated group of which Taxpayer is the common parent.

For the period beginning on or about Date 1 and ending Date 5, Target incurred operating expenses totaling \$e (an amount less than \$d, the total amount of the Capital

Contributions). The amount of these expenses allocable to the Capital Contributions (as opposed to revenues or other sources of cash) was approximately \$f.

Immediately after the Transaction, Target held cash, cash equivalents, and short-term investments with a fair market value of \$g.

In its purchase agreements for the preferred stock issued on Date 1, Date 2, and Date 3, Target anticipated that it would use the offering proceeds for general corporate purposes. Taxpayer has submitted documentation to support its position that Target used a significant portion of the Capital Contributions to meet operating expenses arising proximate in time to Date 1, Date 2, and Date 3, respectively, and that such expenses were necessary to continue basic operations.

Representations

Taxpayer has made the following representations regarding the Transaction and the Capital Contributions:

- (a) As of the Change Date, Target was a loss corporation within the meaning of section 382(k)(1).
- (b) The Transaction resulted in an ownership change (as defined in section 382(g)) for Target on the Change Date.
- (c) Target did not undergo an ownership change (as defined in section 382(g)) prior to the Change Date.
- (d) The Capital Contributions were used in substantial part to meet operating expenses necessary to continue basic operations (including but not limited to employee salaries and benefits, rent and utilities, and professional fees). Such operating expenses totaling \$e were incurred within h months after Date 1, Date 2, and Date 3, respectively, and such expenses were reasonable in amount.
- (e) The financial information submitted is representative of Target's business operations from Date 1 through Date 5, and there were no substantial operational changes during that period.
- (f) Target continued its historic business at all times during the 2-year period beginning on the Change Date within the meaning of section 382(c)(1).

Rulings

Based solely on the information submitted and the representations set forth above, we rule as follows:

1. For purposes of determining the value of the old loss corporation under section 382(e) and the section 382 limitation within the meaning of section 382(b), \$i of the Capital Contributions shall not be taken into account under section 382(l)(1).
2. If the value of the old loss corporation is subject to reduction under both sections 382(l)(1) and 382(l)(4), appropriate adjustments must be made to ensure that a reduction in value is not duplicated.

Caveats

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of any matter relating to the Capital Contributions or the Transaction under any provisions of the Code or the Treasury regulations, or concerning the tax treatment of any conditions existing at the time of, or effects resulting from, such events, that are not specifically covered by the above rulings. In particular, we express no opinion as to whether (or to what extent) the value of the old loss corporation shall be reduced under section 382(l)(4) because the determination requested is primarily one of fact. See Rev. Proc. 2011-3, 2011-1 I.R.B. 111, § 4.02(1).

Procedural Statements

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with a power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Mark S. Jennings

Mark S. Jennings
Branch Chief, Branch 1
Office of Associate Chief Counsel
(Corporate)

cc: